

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

STATE OF OKLAHOMA, ex rel, W.A. DREW)
EDMONDSON, in his capacity as ATTORNEY)
GENERAL OF THE STATE OF OKLAHOMA et al.,)
)
Plaintiff,) Case No. 4:05-CV-329-JOE-SAJ
)
v.)
)
TYSON FOODS, INC et al.,)
)
Defendants,)
)
and)
)
PETERSON FARMS, INC., et al.)
)
Third-Party Plaintiffs,)
)
v.)
)
BRIAN R. BERRY d/b/a TOWN BRANCH GUEST)
RANCH, et al.,)
)
Third-Party Defendants.)

**PLAINTIFF'S MOTION FOR AN ADDITIONAL TWO-WEEK PERIOD
WITHIN WHICH PLAINTIFF MAY ELECT TO FILE A MOTION TO STRIKE
PURSUANT TO RULE 12(f) OF THE FEDERAL RULES OF CIVIL PROCEDURE**

COMES NOW the Plaintiff, the State of Oklahoma, ex rel. W.A. Drew Edmondson, in his capacity as Attorney General of the State of Oklahoma, and Oklahoma Secretary of the Environment, C. Miles Tolbert, in his capacity as the Trustee for Natural Resources for the State of Oklahoma under CERCLA, and respectfully requests this Court for an additional two-week period within which Plaintiff may elect to file a Motion to Strike pursuant to Rule 12(f) of the Federal Rules of Civil Procedure. In support of this Motion, Plaintiff states as follows:

1. Opposing parties and counsel in this case are numerous. No Case Management Order has yet been entered and no liaison counsel have been established. Neither of the two opposing counsel who have been serving on an *ad hoc* basis as liaison counsel has been available for the two days prior to the filing of this Motion to respond to the movants' inquiries regarding whether any opposing counsel object to the Motion. In order to timely file the Motion, strict compliance with Local Rule 7.1(g) cannot be achieved. To comply with Local Rule 7.1(g), Plaintiff will supplement this pleading as soon as opposing counsel's position can be determined.

2. In response to Plaintiff's First Amended Complaint, on October 3, 2005, Defendants filed eight (8) separate Answers in this case. See Dkt. #s 51, 52, 60, 61, 63, 73, 78 and 79. Although there is some overlap, Defendants' Answers identify and set forth almost four-hundred and fifty (450) affirmative defenses -- an average of approximately fifty-six (56) separate affirmative defenses per Answer. On the same date, Defendants also filed nine (9) separate motions requiring Plaintiff to respond. See Dkt. #s 53, 64, 65, 66, 67, 71, 75, 90 and 91.¹

3. If Plaintiff should elect to file a Motion to Strike one or more insufficient defenses or a Motion to strike any redundant, immaterial, impertinent, or scandalous matter set forth in one or more of the aforesaid Answers, Plaintiff understands that Rule 12(f) of the Federal Rules of Civil Procedure would require that Plaintiff's motion be filed within twenty days of October 3, 2005, or on or before Monday, the 24th day of October, 2005.

(f) MOTION TO STRIKE. Upon motion made by a party before responding to a pleading or, if no responsive pleading is permitted by these rules, upon motion made by a party within 20 days after the service of the pleading upon the party or upon the

¹Plaintiff does not intend to object to those motions through which one or more defendant "joins in" a particular motion and simply "adopts" the brief simultaneously filed by its or their co-defendant.

court's own initiative at any time, the court may order stricken from any pleading any insufficient defense or any redundant, immaterial, impertinent, or scandalous matter.

Federal Rules of Civil Procedure, Rule 12(f).

4. The sheer number of affirmative defenses, especially in light of the numerous motions which Plaintiff must address, renders the normal twenty-day period within which to move to strike any insufficient defenses or any redundant, immaterial, impertinent, or scandalous matter inadequate in this case.

5. Plaintiff has not previously sought any extensions of time within which Plaintiff may elect to file a motion to strike pursuant to Rule 12(f) of the Federal Rules of Civil Procedure.

6. Granting Plaintiff the relief sought herein will not impact any scheduled trial date or other deadline.

WHEREFORE, Plaintiff respectfully requests that this Court enter an Order extending until the 7th day of November, 2005, the time period within which Plaintiff may elect to file a Motion to Strike pursuant to Rule 12(f) of the Federal Rules of Civil Procedure.

Respectfully submitted,



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ATTORNEYS FOR PLAINTIFF

THE STATE OF OKLAHOMA

CERTIFICATE OF SERVICE

I hereby certify that on October 21, 2005, I electronically transmitted the attached document to the Clerk of Court using the ECF System for filing. Based on the electronic records currently on file, the Clerk of Court will transmit a Notice of Electronic filing to the following ECF registrants:

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I further certify that on October 21, 2005, I served the foregoing document by U.S. Postal Service on the following, who are not registered participants of the ECF System:

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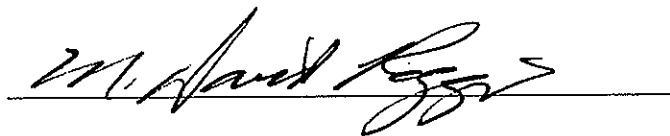
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A handwritten signature in black ink, appearing to read "Michael R. Ryan", is written over a horizontal line.